

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

HARDEE'S FOOD SYSTEMS, INC., )  
                                    )  
Plaintiff / Counterclaim Defendant, )  
                                    )  
                                    )  
v.                               )      No. 4:09CV00664 AGF  
                                    )  
                                    )  
JEFFREY T. HALLBECK, DIANNE )  
HALLBECK, SCOTT HALLBECK, ROBIN )  
HALLBECK, and CAROLYN HALLBECK, )  
                                    )  
Defendants / Counterclaim Plaintiffs. )

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff Hardee's Food System, Inc.'s motion dated November 21, 2010, for leave to file an amended complaint. By Order dated November 24, 2010, the Court explained that it would allow Plaintiff to file the proposed amended complaint with regard to Counts I and II, but would allow Plaintiff to dismiss Count III, which seeks declaratory and injunctive relief to enforce a restrictive covenant in the Renewal Franchise Agreement between the parties, on condition that Plaintiff agreed that such dismissal would be with prejudice.

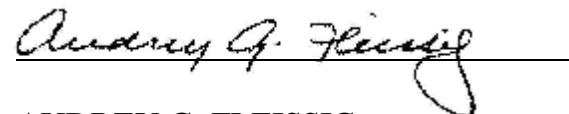
Plaintiff has now represented that it would stipulate that it will not seek to enforce the restriction against Defendants during the time that the restriction remains in effect, but that Plaintiff is concerned that Defendants or others might attempt to argue that a dismissal of Count III with prejudice, despite the circumstances, should be given res

judicata or collateral estoppel effect with respect to Defendants' counterclaim on the same issue or even with respect to Plaintiff's ability to enforce similar provisions against other franchisees in other settings.

The Court concludes that Plaintiff's stipulation that it will not seek to enforce the restriction in question against Defendants during the time that the restriction remains in effect eliminates any reason for not allowing Plaintiff to drop Count III at this time from this action.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's motion to file its proposed amended complaint is granted in all regards. [Doc. 85]

  
AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE

Dated this 2nd day of December, 2010.